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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 UNITED STATES OF AMERICA,) CR No. 11-436(A) -MRW
14 Plaintiff,) GOVERNMENT'S SUPPLEMENT TO ITS
15 v.) OPPOSITION TO DEFENDANTS'
16 HUGO RENE BAQUIAX,) MOTION TO SUPPRESS EVIDENCE;
JOEL CIRILO SOSA HERNANDEZ,) DECLARATIONS; EXHIBIT J
17 Defendants.) STATUS CONFERENCE:
18) November 1, 2011, at 11:00 a.m.
19)
20)
21)

22 Plaintiff United States of America, by and through its
23 counsel of record, the United States Attorney for the Central
24 District of California, hereby files a supplement to its
25 opposition to defendants' motion to suppress evidence.

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1 The government's supplement and opposition are based upon
2 the attached memorandum of points and authorities, the files and
3 records in this case, the attached declarations and exhibit, and
4 any other evidence or argument that the Court may wish to
5 consider during the next scheduled hearing.

6 DATED: October 18, 2011

Respectfully submitted,

7 ANDRÉ BIROTTE JR.
United States Attorney

8 ROBERT E. DUGDALE
9 Assistant United States Attorney
Chief, Criminal Division

10
11 /s/
12 JAMES M. LEFT
13 Special Assistant United States
Attorney

14 Attorneys for Plaintiff
15 United States of America
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Defendants HUGO RENE BAQUIAX ("BAQUIAX") and JOEL CIRILO
5 SOSA HERNANDEZ ("SOSA") filed a motion to suppress evidence that
6 the Los Angeles Police Department ("LAPD") seized from the 907
7 Club during the execution of a search warrant on November 5,
8 2010. The government filed an opposition, which included
9 Exhibits A to I. On October 3, 2011, the Court denied
10 defendants' motion on the ground that defendants failed to
11 establish that they had standing to challenge the search warrant.
12 However, the Court allowed defendants the opportunity to submit
13 declarations in support of their motion.

14 On October 11, 2011, defendant SOSA submitted a declaration
15 in which defendant SOSA asserted that only he and the three other
16 managers of the club had keys and access to the two offices from
17 which documents and a computer were seized. (Declaration of
18 Sosa Hernandez at 3). Defendant SOSA claimed that the doors to
19 these offices remained closed and locked during business hours.
20 (Id.). Defendant also claims that employees who were not
21 managers "were not permitted access to the business office[s]."
22 (Id.). Defendant further claimed that only the managers had
23 access to the filing cabinets in the offices where were the
24 documents were kept. (Id.).

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1 II.

2 TESTIMONY AND EVIDENCE THAT CONTRADICTS DEFENDANT SOSA'S3 DECLARATION

4 Defendant SOSA's declaration is inconsistent with the
5 testimony of defendant BAQUIAX made in support of the motion to
6 suppress. On October 3, 2011, defendant BAQUIAX testified that
7 all four managers and the two owners of the 907 Club had
8 keys and access to the offices, not just the managers.

9 Other portions of defendant SOSA's declaration are
10 inconsistent with the recollections of some of the female
11 employees of the 907 Club. Specifically, the four women provided
12 declarations.¹ These women indicate that the two offices at the
13 907 Club were not locked and secured at all times. Specifically,
14 all four women went to the office used by SOSA to pick up their
15 paychecks. (Declaration of Garcia Guzman at 1; Declaration of
16 Guzman Villapando at 1; Declaration of Romero Sosa at 1;
17 Declaration of Valdez Olivares at 1). Laura Lizeth Garcia Guzman
18 states that sometimes the door to this office was ajar, and at
19 the other times, the door was closed but unlocked. (Declaration
20 of Garcia Guzman at 1). Zinthia Nayeli Romero Sosa states that
21 the door to SOSA's office was always unlocked. (Declaration of
22 Romero Sosa at 1). Olga Yesenia Valdez Olivares states that the
23 door to this office was sometimes unlocked. (Declaration of

24
25 ¹ All four women are unlawfully present in the United
26 States. (Declaration of Porter at 4). U.S. Immigration and
27 Customs Enforcement ("ICE") is allowing these women to remain in
28 the United States, and ICE has provided them with work
authorization. (Id.). With the exception of Laura Guzman
Villalpando, LAPD arrested these women on November 5, 2010, on
charges related to the possession of false identification
documents, and they were convicted of these offenses. (Id.).

1 Valdez Olivares at 1).

2 Guzman Garcia states that generally, the door to the second
3 office was usually locked, but she once went to the office when
4 the door was open. (Declaration of Garcia Guzman at 1). Guzman
5 Garcia also stated that the other managers used this office when
6 defendant BAQUIAX was not on duty. (Id.). Romero Sosa and
7 Valdez Olivares believe that the door to this office was always
8 locked. (Declaration of Romero Sosa at 1; Declaration of Valdez
9 Olivares at 1).

10 Romero Sosa also states that the strippers who participated
11 in the "Bikini Girls Show" used both offices to change their
12 clothes. (Declaration of Romero Sosa at 1-2). All four women
13 state that customers entered the office that Sosa used.
14 (Declaration of Garcia Guzman at 2; Declaration of Guzman
15 Villapando at 1; Declaration of Romero Sosa at 2; Declaration of
16 Valdez Olivares at 2). Sometimes, the customers went there when
17 the door was opened. (Declaration of Romero Sosa at 2;
18 Declaration of Valdez Olivares at 2).

19 Defendant SOSA's declaration is also inconsistent with the
20 undercover videos related to this case. The third recording
21 concerns the Confidential Informant's ("CI") meeting with
22 defendant SOSA on September 20, 2010. (Declaration of Porter at
23 2). The video shows that the filing cabinets inside one of the
24 offices were left open. (Id.). Background noises clearly
25 indicate that SOSA did not lock the office door after SOSA and
26 the CI entered the office, because at one point, one can hear the
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1 door opening and closing.² (Id. at 3). Later in the same video,
2 an unknown woman is sitting on the couch in the office, which
3 indicates that this woman opened the unlocked door and entered
4 the office. (Id.).

5 The fourth recording depicts another meeting between the CI
6 and defendant SOSA on October 25, 2010. (Id. at 3). This
7 meeting took place in an office at the 907 Club, and the office
8 door was not locked. (Id.). In fact, on two occasions, the
9 video shows that the door as being ajar. (Id.).

10 III.

11 STATEMENT OF LAW

12 As previously stated in the government's opposition to the
13 motion to suppress, whether a person has a reasonable expectation
14 of privacy in his work place must be analyzed on a case by case
15 basis as there are a "great variety of work environments."
16 United States v. SDI Future Health, Inc., 568 F.3d 684, 695 (9th
17 Cir. 2009). An individual may assert standing for an office for
18 which the individual has exclusive use and for other areas upon
19 considering the following factors:

20 (1) whether the item seized is personal property or
21 otherwise kept in a private place separate from other
22 work-related material; (2) whether the defendant had
23 custody or immediate control of the item when officers
24 seized it; and (3) whether the defendant took
precautions on his own behalf to secure the place
searched or things seized from any interference without
his authorization.

25 Id. at 698 (footnotes omitted). Without a personal connection or

26 ² The voices in the videos are mostly in Spanish, and there
27 is no need to consider any of the actual conversations at this
28 time. Only the visual depictions need to be considered. The
only audio portion of the recordings that needs to be considered
is the sounds of the office door opening and closing.

1 exclusive use, a defendant cannot establish standing to challenge
2 the search of a workplace. Id.

3 There has been no allegation by either defendant that the
4 LAPD seized their personal property. Defendants also failed to
5 establish that they had exclusive use over the offices. As
6 defendant BAQUIAX testified, the owners of the 907 Club had
7 access to the offices, and the four managers shared the offices.
8 The statements of the four former employees of the club indicate
9 that none of the managers had exclusive use and control over
10 either office. Furthermore, the undercover videos show that the
11 door to one office was not locked at all times and that the
12 managers did not take any steps to secure the contents of the
13 filing cabinets in this office.

14 Given the foregoing, despite the submission of the
15 declaration from defendant SOSA, defendants still fail to
16 establish that they had exclusive use of the offices at the 907
17 Club and that they had exclusive control over the documents
18 contained in the offices. Thus, defendants again have failed to
19 establish that they have standing to challenge the LAPD search
20 warrant.

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IV.

CONCLUSION

For the reasons stated above and for the reasons stated in the opposition to the motion to suppress, the government respectfully requests that the Court reaffirm its denial of defendants' motion to suppress on the ground that defendants lack standing. The government also continues to assert that in the alternative, the Court should deny the motion to suppress for the other reasons stated in the opposition to the motion to suppress.

DATED: October 18, 2011

Respectfully submitted,

ANDRÉ BIROTTE JR.
United States Attorney

ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

/s/
JAMES M. LEFT
Special Assistant United States
Attorney

Attorneys for Plaintiff
United States of America

1 DECLARATION OF LAURA LIZETH GARCIA GUZMAN

2 1. I was hired to worked at the 907 Club in January 2007,
3 and I worked there until November 5, 2010. During this time, I
4 worked under the name "Rebeca Tostado," and I was employed as a
5 dance hostess. My shift was initially from 6:00 p.m. to 2:00
6 a.m., but usually I started earlier. I later changed my hours to
7 12:00 p.m. to 6:00 p.m. Most days, I worked the same shifts as
8 my mother, Laura Guzman Villalpando.

9 2. There were two offices inside the 907 Club, and they
10 were next to each other. Hugo Baquiaux used both offices.
11 Baquiaux primarily used the office that contained the safes.
12 Every once in awhile, the other managers used that office when
13 Baquiaux was not on duty. Joel Sosa, Jose Quiroz, and Fernanda
14 Herrera used the other office.

15 3. I had been inside Sosa's office on many occasions. I
16 picked up my paycheck by going that office. I also went there to
17 ask permission to miss work for a day. Other women also went
18 there to pick up their paychecks. When I went to receive my
19 paycheck, sometimes the door was ajar, and other times, it was
20 closed. When the door was closed, sometimes it was locked.

21 4. I only went to Baquiaux's office on two occasions.
22 One occasion, I went to the office to ask about my work outfit.
23 I only stood by the door. When I got to the door, it was closed,
24 and it was probably locked. I had to knock on the door. On the
25 other occasions, I went inside the office to speak to Baquiaux.
26 The door was open, and then Baquiaux got up to close it. If no
27 one was in the office, Baquiaux kept the door locked. On some
28 occasions, I noticed that female employees knocked before

1 entering, but the door was unlocked. On other occasions, Baquiaux
2 had to unlock the door for the women to enter.

3 5. Sometimes, I saw the customers of the club go into the
4 office that Sosa and the other managers used. The customers went
5 there when they could not pay their bills. I do not remember
6 whether the door was open or closed when the customers went to
7 that office.

8 I hereby certify under penalty of perjury that the foregoing
9 is true and correct to the best of my knowledge and belief.

10
11 Dated: October 18, 2011



Laura Lizeth Garcia Guzman

DECLARATION OF LAURA GUZMAN VILLALPANDO

1. I worked at the 907 Club from about January 2007 to November 2010. From 2007 to 2009, I worked under the name "Leticia Brito." In 2009 and 2010, I worked at the club under my own name. From 2007 to 2010, I was employed as a dance hostess. Initially, my shift was from 6:00 p.m. to 2:00 a.m. I later changed my hours to 12:00 p.m. to 6:00 p.m.

2. There were two offices inside the 907 Club, and they were next to each other. Hugo Baquiaux used both offices, but only Baquiaux and the owner, Michelle Hutchinson, had access to one office. Joel Sosa, Jose Quiroz, Fernanda Herrera, and "Patty," the cashier, used the other office.

3. I had been inside Sosa's office on many occasions to pick up my paychecks and to request permission to miss work or leave early. I also went to that office when I had a complaint about a client. Other women also went there to pick up their paychecks. When I went to Sosa's office, the door was locked.


4. I only went to Baquiaux's office on three or four occasions. On two occasions, I went to that office to pick up a paycheck. Another time, I went there to speak to Baquiaux about my work outfit. Another time, I went there to ask for time off from work. Each time, I had to knock on the door, because the door was closed. I do not know if it was locked. There were filing cabinets with drawers in Baquiaux's office.

5. Sometimes, I saw the customers of the club go into the office that Sosa and the other managers used. The customers went there when they had complaints. The customers knocked before entering, and they entered after the person inside gave

1 permission. At times, the office door was locked, and at other
2 times, it was unlocked.

3 I hereby certify under penalty of perjury that the foregoing
4 is true and correct to the best of my knowledge and belief.

5
6 Dated: October 18, 2011



Laura Guzman Villalpando

DECLARATION OF ZINTHIA NAYELI ROMERO SOSA

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2 1. I worked at the 907 Club for about one week in February
3 2009. I also worked at the club for about two months until
4 November 5, 2010. During that time, I was employed as a dance
5 hostess. I usually worked the day shift from 12:00 p.m. to 6:00
6 p.m. However, I worked the night shift on November 5, 2010.

7 2. There were two offices inside the 907 Club, and they
8 were next to each other. Hugo Baquiaux primarily used one office
9 that was always locked. Joel Sosa, Jose Quiroz, and Fernanda
10 Herrera used the other office.

11 3. I had been inside Sosa's office several times to pick
12 up my paycheck. Other times, I went to that office when I had a
13 complaint. Other women also went there to pick up their
14 paychecks and for other reasons. Every time I went to that
15 office, it was unlocked. Each time I went to the office, it was
16 before 6:00 p.m.

17 4. I only went to Baquiaux's office on two occasions.
18 One time, I went to that office because there was a problem with
19 my paycheck. I had to knock on the door, because the door was
20 locked, and Baquiaux was inside and on the phone. On another
21 occasion, I went to Baquiaux's office, because I requested
22 permission to leave early. I had to knock on the door this time
23 as well. To my knowledge, Baquiaux's office was always locked. I
24 do not remember if there were filing cabinets in Baquiaux's
25 office.

26 5. On November 5, 2010, I saw the strippers who
27 participated in the "Bikini Girls Show," which took place on
28 Friday nights. On that night, I saw them go into Sosa's office

1 to change their clothes. At that time, the office door was open.
2 Also, other women who worked at the club told me that the
3 strippers used both offices to change their clothes.

4 6. Sometimes, I saw the customers of the club go into the
5 office that Sosa used. I do not know why they went there. At
6 times, I saw that the door was opened, and it was closed after
7 the customers entered the office.

8 I hereby certify under penalty of perjury that the foregoing
9 is true and correct to the best of my knowledge and belief.

10
11 Dated: October 18, 2011


12 Zinthia Nayeli Romero Sosa
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1 DECLARATION OF OLGA YESENIA VALDEZ OLIVARES

2 1. I was hired to work at the 907 Club in 2004. I stopped
3 working at the club on four occasions, and I was rehired four
4 times. Following the last time that I was rehired, I worked at
5 the club until November 5, 2010. During my periods of
6 employment, I was employed as a dance hostess. For some shifts,
7 I worked from 1:00 p.m. to 10:00 p.m. During other shifts, I
8 worked from 1:00 p.m. to 12:00 a.m. or 2:00 a.m.

9 2. There were two offices inside the 907 Club, and they
10 were next to each other. Hugo Baquiaux used both offices, and
11 Joel Sosa only had access the one office. Jose Quiroz and
12 Fernanda Herrera used the same office as Sosa.

13 3. I had been inside Sosa's office on many occasions. I
14 picked up my paycheck every week by going that office. Other
15 women also went there to pick up their paychecks. When the other
16 women and I went to receive our checks, the door to the office
17 remained unlocked. On other occasions, the door was locked, and
18 a manager was inside.

19 4. I only went to Baquiaux's office on two occasions.
20 One time, I went to that office, because there was a problem with
21 my check. I had to knock on the door, because the door was
22 locked and Baquiaux was inside. On another occasion, I went to
23 Baquiaux's office, because I requested permission to leave early.
24 To my knowledge, Baquiaux's office was always locked. There may
25 have been filing cabinets in Baquiaux's office, but I am not
26 certain.

27 5. During both times that I was inside Baquiaux's office, I
28 noticed that the owner, Michelle Hutchinson, had put out a

1 display in the office. This display contained jewelry that
2 Hutchinson sold to the women who worked at the club.

3 6. Sometimes, I saw the customers of the club go into the
4 office that Sosa and the other managers used. The customers went
5 there when they had complaints. Sometimes, the door was open
6 when the customers went to speak with a manager.

7 I hereby certify under penalty of perjury that the foregoing
8 is true and correct to the best of my knowledge and belief.

9
10 Dated: October 18, 2011


11 Olga Yesenia Valdez Olivares
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DECLARATION OF CRAIG PORTER

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2 1. I am a Special Agent ("SA") with the United States
3 Department of Homeland Security ("DHS"), U.S. Immigration and
4 Customs Enforcement ("ICE"). I am assigned to the Work Site
5 Enforcement Unit of the Los Angeles district office. I am the
6 lead case agent concerning the case involving the 907 Club, which
7 was a "hostess club" in downtown Los Angeles. Customers paid to
8 talk and dance with the club's hostesses, many of whom were
9 illegal aliens. Defendants BAQUIAX and SOSA were two of the
10 managers at the club.

11 2. As part of ICE's investigation into the 907 Club, on
12 multiple occasions, I sent a female Confidential Informant ("CI")
13 to the 907 Club. On four occasions, the CI went to the club with
14 a video and audio recorder hidden inside of a purse. On each
15 occasion, I gave the purse and recording equipment to the CI.
16 Also on each occasion, the CI immediately returned these items to
17 me after she left the club. I have reviewed all four videos,
18 which depict, in pertinent part, the following.

19 3. On September 8, 2010, I sent the CI to seek employment
20 at the 907 Club. At about 7 minutes and 7 seconds into the first
21 video recording, Fernanda Herrera, an assistant manager, opens
22 the door to one of the offices inside the club. (Exhibit J,
23 recording 1). Just before then, it appears that Herrera is
24 holding a set of keys, but I could not determine if she used a
25 key to open the door. Herrera then turns on the lights to the
26 office. Both Herrera and the CI then sit down with a desk in
27 between them.

1 4. At about 7 minutes and 17 seconds into the recording,
2 and during other times, the video clearly shows that the filing
3 cabinet doors are open. At about 12 minutes and 12 seconds into
4 the recording, Herrera turns off the lights, opens the door, and
5 leaves the office. The CI also leaves the office. There is no
6 indication as to whether Herrera locked the office door.

7 5. On September 10, 2010, I sent the CI to work at the 907
8 Club. As displayed in this video, the CI spoke with a security
9 guard outside of the club and then returned to my location.
10 (Exhibit J, recording 2). The CI informed me that once she
11 started working, she could not leave the club. Thus, the CI was
12 sent back to the club again to work without the recording
13 equipment.

14 6. On September 20, 2010, I instructed the CI to go to the
15 907 Club to pick up her paycheck. The CI went to the club, and
16 this was recorded. (Exhibit J, recording 3). At that time, the
17 CI met with defendant SOSA. At about 4 minutes and 30 seconds
18 into the recording, Sosa opened the door to the office. A paper
19 in SOSA's left hand blocked the view of the door as he opened it,
20 and thus, I could not determine whether SOSA used a key to open
21 the door.

22 7. At about 5 minutes and 24 seconds into the third video
23 and at other times, the left door of the filing cabinet is
24 depicted, and it is clearly open. At about 12 minutes and 27
25 seconds into the video, paperwork is clearly visible on the lower
26 shelf of the left side of the cabinet. At about 13 minutes and
27 25 seconds into the video, the right side of the cabinet is
28 visible, and it is clearly open.

1 8. Background noises clearly indicate that SOSA did not
2 lock the office door after SOSA and the CI entered the office.
3 At about 12 minutes and 57 seconds, I could hear a door opening
4 and closing. At about 13 minutes and 27 minutes, the video
5 depicts an unknown woman sitting on the couch in the office.
6 Based upon this information, I believe that this woman opened the
7 unlocked door, entered the office, and then sat down on the
8 couch.

9 9. On October 25, 2010, I again asked the CI to seek
10 employment at the 907 Club. The CI again went to the club with
11 the undercover recording device. (Exhibit J, recording 4). At
12 about 6 minutes and 4 seconds into the video, the CI is inside
13 the club and reaches for the office door. At the same time,
14 defendant SOSA opens the door from the inside and lets the CI
15 come in. At about 6 minutes and 8 seconds into the video, the CI
16 closes the office door. As reflected below, the door was not
17 locked.

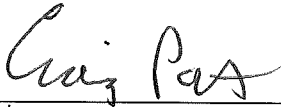
18 10. At about 7 minutes and 53 seconds into the fourth
19 video, I clearly saw that there were no filing cabinets against
20 the wall behind the desk, as depicted in the prior videos. At
21 about 7 minutes and 57 seconds, the video depicts the office door
22 as being ajar and then closing, possibly by someone outside the
23 office. At about 13 minutes and 33 seconds, the video again
24 depicts the office door as being ajar. At about 13 minutes and
25 44 seconds, the CI leaves the office, and it is not unknown
26 whether the office door is closed behind her.

27 11. I am also familiar with the four other declarants,
28 Laura Lizeth Garcia Guzman, Laura Guzman Villalpando, Zinthia

1 Nayezi Romero Sosa, and Olga Yesenia Valdez Olivares. All four
2 women are unlawfully present in the United States. ICE is
3 allowing these women to remain in the United States, and ICE has
4 provided them with work authorization. With the exception of
5 Laura Guzman Villalpando, LAPD arrested these women on November
6 5, 2010, on charges related to the possession of false
7 identification documents, and they were convicted of these
8 offenses.

9 I hereby certify under penalty of perjury that the foregoing
10 is true and correct to the best of my knowledge and belief.

11
12 Dated: October 18, 2011



Craig Porter